Detroit Plastics Products Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local 236, UAW. Case 7-CA-19801

January 29, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on September 14, 1981, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local 236, UAW, herein called the Union, and duly served on Detroit Plastics Products Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on October 6, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on June 18, 1981, following a Board election in Case 7-RC-16138, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that at all material times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On October 26, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint, and raising as affirmative defenses that the results of the election were invalid inasmuch as the Union had engaged in improper preelection conduct.

On November 9, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on November 17, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed an opposition to counsel for the General Counsel's motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent admits its refusal to bargain but attacks the Union's certification on the basis that Respondent's objections in the underlying representation case were improperly overruled. Counsel for the General Counsel argues that there are no matters warranting a hearing as the issues concerning the Union's certification were litigated and determined in the underlying representation case. We agree with counsel for the General Counsel.

A review of the record, including the record in Case 7-RC-16138, indicates that pursuant to a Stipulation for Certification Upon Consent Election a secret-ballot election was held on January 30, 1981, in the unit found appropriate. The Union won the election. Thereafter, Respondent filed timely objections to the election alleging that the Union had engaged in improper preelection conduct. Specifically, Respondent alleged that prior to the election the Union (1) informed employees that it would know how each person voted, and (2) distributed a leaflet to employees which allegedly indicated that only employees signing authorization cards before the election would be eligible for a waiver of initiation fees.[2] After investigation, the Regional Director, on March 6, 1981, issued a notice of hearing on objections, in which he concluded that substantial and material issues of fact existed with respect to Respondent's objections, and that these issues could best be resolved after a hearing. A hearing was held on March 20, 1981. On April 3, 1981, the Hearing Officer issued his Report on Objections recommending that Respondent's objections be overruled in their entirety. On April 13, 1981, Respondent filed exceptions and a brief in support thereof to the Hearing Officer's recommendations contending, *inter alia*, that the Hearing Officer erred as to his credibility findings, and reiterating

[1] Official notice is taken of the record in the representation proceeding, Case 7-RC-16138, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] The Union's leaflet to the employees stated, *inter alia*, that "Members of the UAW pay two hours' pay a month or 1.1% of their monthy salary and *we have waived the initiation fee for all eligible employees.*" Respondent contended that the word "eligible" in the Union's leaflet is ambiguous and susceptible to misinterpretation by the employees.

its argument that the Union's initiation fee waiver was ambiguous and violated the rule set forth in *N.L.R.B.* v. *Savair Manufacturing Co.*, 414 U.S. 270 (1973). On June 18, 1981, the Board issued its Decision and Certification of Representative (not reported in volumes of Board Decisions) wherein the Board, having reviewed the record in light of the exceptions, found that Respondent's exceptions raised no material issues of law or fact, adopted the Hearing Officer's findings and recommendations, and certified the Union as the collective-bargaining representative of the employees in the appropriate unit.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Michigan corporation, is engaged in the manufacture, sale, and distribution of automobile parts. During the year ending December 31, 1980, a period representative of Respondent's operations, Respondent received goods and services valued in excess of $50,000 directly from suppliers located outside the State of Michigan.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

III. THE LABOR ORGANIZATION INVOLVED

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local 236, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time production and maintenance employees, including material handlers and shop janitors, employed by the Employer at its facility located at 35135 Groesbeck Highway, Mt. Clemens, Michigan; but excluding truck drivers, machine repair employees, the office janitor, inspectors, the label maker, the tool crib attendant, die setters, shipping and receiving employees, casual employees, office clerical employees, guards and supervisors as defined in the Act.

2. The certification

On January 30, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 7, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on June 18, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about August 13, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about August 13, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.[4]

[3] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[4] Respondent admits that it has refused to bargain with the Union in response to the Union's requests for bargaining commencing on August 13, 1981. Further, on October 1, 1981, Respondent, by letter of that date, informed the Union that it would not engage in collective bargaining because it believed the certification of the Union was improper.

Accordingly, we find that Respondent has, since August 13, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Detroit Plastics Products Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local 236, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees, including material handlers and shop janitors, employed by Respondent at its facility located at 35135 Groesbeck Highway, Mt. Clemens, Michigan, but excluding truckdrivers, machine repair employees, the office janitor, inspectors, the labelmaker, the toolcrib attendant, diesetters, shipping and receiving employees, casual employees, office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since June 18, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about August 13, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Detroit Plastics Products Company, Mt. Clemens, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local 236, UAW, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All full-time and regular part-time production and maintenance employees, including material

handlers and shop janitors, employed by the Employer at its facility located at 35135 Groesbeck Highway, Mt. Clemens, Michigan; but excluding truck drivers, machine repair employees, the office janitor, inspectors, the label maker, the tool crib attendant, die setters, shipping and receiving employees, casual employees, office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its 35135 Groesbeck Highway, Mt. Clemens, Michigan, place of business copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

[5] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and its Local 236, UAW, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time production and maintenance employees, including material handlers and shop janitors, employed by the Employer at its facility located at 35135 Groesbeck Highway, Mt. Clemens, Michigan; but excluding truck drivers, machine repair employees, the office janitor, inspectors, the label maker, the tool crib attendant, die setters, shipping and receiving employees, casual employees, office clerical employees, guards and supervisors as defined in the Act.

DETROIT PLASTICS PRODUCTS COMPANY